

REMARKS

By the present amendment, Applicant proposes to amend Claims 17, 22, and 36. Upon entry of the proposed amendment, independent Claim 17, with Claims 18-35 depending therefrom, and independent Claim 36 will remain for consideration.

In the recent Office Action the Examiner rejected Claims 17-36 under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant has amended Claims 17 and 36 to recite that the inner layer of hard candy is *mounted on* the carrier (*emphasis added*). Support for these amendments is found in originally presented, now canceled Claim 12. Applicant has also amended Claims 22 and 36 to recite that the exterior layer is *detailed to* represent the skin and flesh (*emphasis added*). Support for these amendments is found at page 12, lines 9-10. With respect to the Examiner's assertion of the term "inedible" carrier, Applicant notes that the originally filed disclosure recites that the candy is mounted on a stick that serves as a handle, such as a conventional lollipop. It is conventionally known in the art that a lollipop stick is inedible, unless it is specifically stated to the contrary. Applicant respectfully submits that Claims 17-36, as amended, meet the specific requirements of 35 U.S.C. § 112, second paragraph.

Applicant will advance arguments hereinbelow to illustrate the manner in which the presently claimed invention is patentably distinguishable from the cited and applied prior art. Reconsideration of the present application is respectfully requested.

The Examiner rejected Claims 17-36 under 35 U.S.C. 103(a) as being unpatentable over Tamasaki (JP 10-215759) in view of Mederer (EP 349,841), and Neuhauser (FR 2,744,593), or in the alternative of Mederer and Neuhauser in view of Tamasaki, both further in view of a myriad of alleged combinations Manoski (6,159,511), Heppe (873,369),

Mueller (1,494,861), Renner (2,924,529), Eales (5,066,502), Josephsohn (Des. 69,277), Harris et al. (Des. 274,859), Bernat (EP 447733), Gardner (3,366,077), Oprean (1,913,851), Devillars (GB 302303), Sisco (Des. 54,782), and Swiss Colony Christmas Book (Pub. 1982). These grounds of rejections are respectfully traversed. It is noted that the Sisco reference is still not cited on the PTO-892.

Applicant has amended the claims to overcome the rejection under 35 U.S.C. § 112, second paragraph. Applicant has also reiterated the arguments that the instantly claimed embodiments distinguish over the applied prior art of record. Applicant respectfully submits that for at least these reasons, Claims 17-36 are allowable over the prior art applied of record.

Independent Claim 17, as amended, recites a candy novelty including a carrier substrate; a first layer of substantially hard candy mounted on a portion of the carrier substrate. The first layer of substantially hard candy is characterized as having a solid three-dimensional shape of a human skull. A second layer of generally soft candy is disposed over the first layer, with the second layer being of generally soft candy forming generally an exterior representation of an anatomically correct face. The second layer is further characterized as being detailed so as to represent a recognizable persona.

Independent Claim 36, as amended, recites a candy novelty including a carrier substrate; a first layer of substantially hard candy mounted on a portion of the carrier substrate, the first layer of substantially hard candy having a solid three-dimensional shape of a skeleton of a thumb; and a second layer of generally soft candy disposed over the first layer, the second layer of generally soft candy forming generally an exterior representation

of an anatomically correct thumb; wherein the second layer of generally soft candy is detailed so as to represent a recognizable thumb.

The claims in this application have been revised to more particularly define Applicant's unique construction in view of the prior art of record. Reconsideration of the claims in light of the amendments and for the following reasons is respectfully requested.

The primary applied reference to Tamasaki discloses a cake formed in and flavor to represent a portion of fried chicken when eaten. The Tamasaki reference fails to provide a carrier substrate, such a stick, as recited in each of Applicant's independent Claims 9, 14, and 19. Further, the Tamasaki provides a hard biscuit as an imitation bone, and a flavored cake material as the flesh in order to simulate fried chicken, wherein the imitation bone is an edible carrier. As such, the Tamasaki foodstuff may reduce the amount of residual waste; Tamasaki increases the risk of the ingestion of a bacterial or viral matter due to the handling of the edible carrier.

The secondary references likewise fail to provide the necessary teaching to overcome the deficit of the Tamasaki reference. For instance, each of the references to Mederer and Neuhauser discloses multi-layer foodstuff that has at least three layered segments, such that the top and bottom layers are the same, and the inner layer has a different shape and color, so as to represent a 'traditional hamburger', or some other sandwich type food. Neither Mederer nor Neuhauser describe a candy novelty having a carrier substrate, such as a stick. There is no guidance or motivation found in either of these references that would have lead one of ordinary skill to obviously arrive at Applicant's uniquely claimed structure as now recited in independent Claims 17 and 36.

With respect to the remaining myriad of alleged combinations, it is Applicant's opinion that there is not a single cited or applied reference that encompasses the basic structure, alone or in combination, of Applicant's candy confection novelty as claimed. Specifically, the remaining relied upon references to Manoski, Heppe, Mueller, Renner, Eales, Bernat, Gardner, Oprean, DeVillars, Sisco, Burt ('324), Burt ('997), Musher, and the Swiss Colony pub., like Mederer and Neuhauser, fail lead one having ordinary skill to obviously arrive at Applicant's claimed invention, as recited in the independent claims. Albeit, the Bernat reference does disclose a non-edible wand (i.e., stick) however, the Bernat clearly specifies that the wand is disposed in the lower semi-spherical outer layer of the lollipop. In addition, the outer layer of Bernat is formed of a substantially hard and transparent candy. The purpose of this formulation is that Bernat desires the nucleus to be visible before consumption of the outer layer of the lollipop. Whereas, Applicant's claimed candy provides a delightful and surprise effect for the consumer upon seeing the hidden internal hard candy having the anatomical form.

With respect to the Josephohn and Harris et al. design patents, although the physical appearances of these applied references seem to disclose the form of a body or body part, there is no guidance or motivation that provides one having ordinary skill in the art, aside from Applicant's own disclosure to arrive at the structure and arrangement of the claimed embodiments of Applicant's invention.

Further, the application of such a great barrage of references would lead one skilled in the art into chaos and confusion rather than to the structure of the claimed embodiments. As such, Applicant respectfully requests the withdrawal of these unusual grounds of

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rejections that seemingly appear at a "grasping of straws" without teaching the specific limitations required of the claims.

For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard C. Litman", with a stylized, flowing script.

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